'Lost' FBI Papers Top 1,500, Defense Says

By Allan Frank
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Defense lawyers for two former, high-ranking FBI agents accused of overseeing illegal break-ins, wiretaps and mail openings against the Weather Underground yesterday claimed the Justice Department has lost or destroyed 1,527 files relevant to its case.

Attorneys for the former FBI acting associate director, W. Mark Felt, and Edward S. Miller, former FBI assistant director for domestic intelligence, yesterday accused the government of "gross negligence" in handling the case in a filing in U.S. District Court.

"This negligence has resulted in the destruction by the government of relevant documents and evidence of a volume probably unparalled in the history of criminal investigations in America," said the memorandum filed by Felt's attorneys, Brian P. Gettings, Frank W. Dunham Jr. and Mark D. Cummings.

According to the memo which supports the defense request for dismissal of the indictment against Felt, Miller and former FBI Acting Director L. Patrick Gray III, the prosecutors recently supplied information that 47 file drawers containing 1,527 files are missing.

THE THREE former FBI officials are accused of conspiring to violate the rights of relatives of Weather Underground relatives living in New York City and Union City, N.J., in 1972 and 1973.

The documents originally were seized by prosecutors in August 1976 from the FBI headquarters section known as IS-2 which supervised the investigations of the Weatherman fugitives.

In August of this year, prosecutors conceded to the defense that 47 files were believed to have been misplaced or destroyed by a former FBI agent named Robert Shackelford who was under investigation for his role in the actions against the Weather Underground.

"The irony does not escape us that, while we were advised that merely 47 file folders were missing, it develops that, in fact, 47 file drawers are missing," the Felt defense attorneys said.

GETTINGS SAID yesterday that subsequent questions by the defense prompted a search by prosecutors which revealed that the vast number of documents that had been catalogued in the case were missing.

"Nobody had bothered to look," Gettings said. "When we started asking questions, they came up with a direct response to a direct question. They gave us the files we specified from the inventory and told us of the files you asked for 47 are missing. We kept asking direct questions and that's when they came up with 'My God, there are 1,500 missing.' "